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ON
THE IGC
AND THE FIGHT AGAINST RACISM

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These Briefings have been drafted by the Parliament Secretariat Task Force on the Intergovernmental Conference. Their purpose is to gather together, in an organized, summary form, the proposals and suggestions which the authorities in the Member States, the Union's institutions and specialist commentators have put forward on the issues likely to be on the IGC/96 agenda. Briefings will be updated as negotiations proceed.

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**BRIEFING
ON
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1. The IGC agenda and the fight against racism

The year 1997, which is of crucial importance to the process of European integration, since it will see the conclusion of the work of the IGC on the revision of the Treaty on European Union, has been designated 'European Year against Racism and Xenophobia'.

Given the urgent and immediate nature of the fight against racial discrimination, it is important to stress that the Community has been committed to coherent action against racist and xenophobic behaviour in society within its territory since the 1980s. The Declaration against racism and xenophobia adopted on 11 June 1986 by the European Parliament, the Council and the Commission represents a significant political statement in this sense.

Nonetheless, as the 1990s draw to a close, the resurgence of manifestations of racial hatred and of xenophobic ideology in Europe, as manipulated by the parties of the far right, is creating phenomena which are reaching unacceptable proportions in a Community of states governed by the rule of law.

Despite the stepping-up of judicial measures to combat racism in virtually all the Member States, we are confronted with a continuous escalation in discriminatory treatment and acts of criminal aggression, directed not only at third-country citizens but also at our ethnic and minority communities, whose members are integrated into the political and administrative systems of our states. The problems facing immigrants, especially those in an irregular situation, are often dramatic, and are visible proof of the failure of the process of integration of these social groups into the European social fabric, at a time when the dynamic of unification is turning Europe, not only de facto but also in legal terms, into a multicultural and multiethnic reality.

In the face of this major challenge to democratic society and to Europe's multicultural identity, the limits of the existing Community decision-making process for actions against racism are obvious, given the absence of a legal basis in the Treaty. The legal and institutional debate on what the Union's role should be in the sphere of the protection of fundamental rights has long been in full swing, with sharply diverging viewpoints existing; however, one can by now say that there is a consensus in favour of suitable action to fight racism.

On the basis of these considerations, the aim of the present briefing is to draw up a balance-sheet of the state of progress of the work of the IGC in the area of action against racism.

Among the main elements brought to the fore by the debate on fundamental rights, with particular reference to the non-discrimination clause, one must stress the following questions: whether the principle of non-discrimination should be extended to race; and whether it is desirable to provide for a specific legal basis for the adoption of measures against racism and xenophobia, and how the relevant field of application should be defined (in relation to the EC Treaty and/or Title VI of the TEU).

From the examination of the positions of the Community institutions and the Member States, one may conclude that there is a majority view in favour of the above two forms of action. It is therefore highly likely that the revision of the TEU will bring the fight against racism and xenophobia explicitly within the Union's field of action.

2. The Treaties and the fight against racial discrimination

The Treaties do not contain any specific reference to action against racism; this is primarily the responsibility of the Member States and the regional and local authorities.

Action to combat racial discrimination should not, however, be considered as something apart from the protection of fundamental human rights, respect for which is a general obligation incumbent on the Union via the Treaty on European Union. Article F.2 of the TEU states: 'The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law'. The Treaties also impose on the Community a general obligation to establish the right of the free movement of persons and to prohibit all discrimination on grounds of nationality (Article 6 of the EC Treaty).

Given that the right to equal treatment and non-discrimination is a basic principle underlying all Community policies, and since the proliferation of racist and xenophobic attitudes is in flagrant contradiction to this, the Commission, in its communication of 13 December 1995 on racism, xenophobia and anti-semitism, has taken the view that 'European-level action is justified where there is clear added value to what can be achieved at national level alone, or where action is required to help ensure respect for basic and attainment of Treaty objectives throughout the Community' (COM(95)0653, 13 December 1995, p. 4).

Despite the absence of specific powers in the Treaties which might serve as a basis for adopting measures to combat racism, the notion is already taken into account in the intervention instruments which exist in the various fields concerned. More precisely, for some time already now there have been means of supporting actions to promote integration and fight racism in the context of the Community's initiatives under the European Social Fund: the 'Emploi-INTEGRA' section, covering the planning period 1996-1999; the URBAN and ADAPT initiatives; and the Community action programmes in such areas as information, culture (MEDIA II), education and training for young people (Socrates, Leonardo da Vinci and Youth for Europe III). In addition to these large-scale

instruments, the Commission supports a restricted number of pilot schemes (e.g. the 'cities against racism' scheme), which are run essentially by NGOs and immigrants' associations.

In view of its immediate relevance, one should also mention the proposal for a Council decision submitted by the Commission on 13 December 1995 designating 1997 as European Year against Racism. The legal basis of this measure is Article 235 of the EC Treaty. The specific objective of the proposal for a decision is 'to give the European institutions, acting together, an instrument enabling them to show that Europe is far from wishing to silence this subject, and to make a positive practical contribution to the fight against racism, complementing the action taken at local, regional and national level'. The resolution designating 1997 'European Year against Racism and Xenophobia' was formally adopted by the representatives of the Member States meeting in Council on 23 July 1996. Two days later, the Council agreed the conditions for organizing future activities of the Consultative Commission on Racism and Xenophobia, which will operate until the European Monitoring Centre on Racism and Xenophobia is in place. The official opening of the European Year against Racism in The Hague on 30 January 1997 was also the occasion of the signing by representatives of the European institutions of a declaration of intent against racism and xenophobia.

The project for joint action to combat racism and xenophobia, furthermore, falls within the sphere of judicial cooperation, and implies the need for further progress in the harmonization of civil and criminal legislation, with the aim of ensuring that there are effective penalties for racist actions defined as criminal by the Fifteen.

This initiative is one of the measures proposed by the Spanish presidency with a view to acting on the conclusions of the Cannes European Council of 26-27 June 1995, as well as on the report of the Consultative Commission on Racism and Xenophobia set up by the Corfu European Council in June 1994, the objective being to step up efforts to define a global strategy at Union level to combat racism and xenophobia. The Cannes European Council had also called on the Consultative Commission to *prolong its work in order to study, in close cooperation with the Council of Europe, the feasibility of setting up a European monitoring unit on racist and xenophobic phenomena.*

Following the proposal by the Spanish presidency for a joint action in the field of CJHA cooperation, the Justice and Home Affairs Council, under the Italian presidency, agreed on 19 March 1996 to adopt a joint action to fight racism and xenophobia, on the basis of Article K.2(b) of the TEU. This text was formally adopted by the Council on 15 July 1996 (OJ L 158, 24.7.1996, pp. 5-7).

The existence of a joint competence, shared by the Community and the Member States, to combat racism and xenophobia is, in addition, firmly underlined in the joint declaration of 11 June 1986 by the European Parliament, the Council, the representatives of the Member States, meeting within the Council, and the Commission (OJ C 158, 25.6.1986, p. 1).

3. The European Council

The European Council has, on several occasions, condemned racism and xenophobia and called for action by the Member States.

The European Council meeting in Florence on 21 and 22 June 1996, in the framework of the Intergovernmental Conference, reaffirmed the Union's determination to fight racism and xenophobia with the greatest firmness; it approved the principle of creating a European monitoring centre, and called on the Council to examine the question of the legal and budgetary status of the proposed unit and possible forms of liaison between it and the Council of Europe, and to instruct the Consultative Commission on Racism and Xenophobia to continue its work until the monitoring centre is in place (Florence European Council, 21-22 June 1996, conclusions of the Presidency).

The Council also noted the Italian Presidency's report of 17 June on progress at the Intergovernmental Conference, which noted the main issues. Among those raised in the debate on human rights and non-discrimination clauses was the question of whether non-discrimination should be extended to race and whether there should be a special legal base for measures against racism and xenophobia, with a definition of its scope (EC Treaty or Article VI of the TEU).

4. The general background to the draft revision of the treaties of 5 December 1996

As requested by the Florence European Council, at its most recent meeting in Dublin on 13 and 14 December the European Council took note of a text produced by the Irish Presidency entitled *A general outline for a draft revision of the Treaties*. On combating racism, the text reflects work at the IGC and in accordance with the objectives listed by the European Council includes a non-discrimination clause that takes in race and a specific legal base under the third pillar that provides for cooperation between Member States and joint measures in the Union to prevent and combat racism and xenophobia.

The modifications in Chapter 1, Section 1, in the first part of the document, entitled *An area of freedom, security and justice* reinforce and guarantee the Union's adherence to fundamental rights and non-discrimination. Provision is made for the incorporation of a new Article 6a stating:

Within the scope of application of this Treaty and without prejudice to any special provisions contained therein, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to prohibit discrimination based on sex, racial, ethnic or social origin, religious belief, disability, age, or sexual orientation.

There is also a new article clarifying the issue of judicial control of respect for fundamental rights and instituting a procedure to determine the existence of a serious and persistent

breach by a Member State of the principles on which the Union is founded and to suspend certain of that state's rights.

Secondly the amendment of Article K.1 of the TEU proposed in Chapter 3, Section 1 of the *General outline for a draft revision of the Treaties* specifically mentions the fight against racism and xenophobia as an area in which the Member States should cooperate and act together under the third pillar, with a considerable strengthening of the instruments available to the Union to make this cooperation possible. The new Article K.1 says:

Without prejudice to the powers of the European Community, the following areas shall be regarded as matters of common interest for the Member States with a view to cooperation and common action within the Union: ... 4. preventing and combating racism and xenophobia.

The proposed revision to Article K.3(2) of the TEU, which describes the institutions and instruments for action in the field of justice and home affairs reads:

The Council shall take measures and promote, using the appropriate forms and procedures, any cooperation contributing to the pursuit of the objectives of the Union. To that end, on the initiative of any Member States or of the Commission and after consulting the European Parliament, it may:

- (a) adopt specific decisions (by unanimity), whether for the purpose of establishing a common position or for the purpose of setting up an operational action of the Union. These decisions shall be binding upon the Member States. The Council, acting by a qualified majority, shall adopt measures implementing the decisions setting up an operational action.*
- (b) adopt (by unanimity) framework decisions for the purpose of approximation of laws. These decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. The Court of Justice shall have jurisdiction to interpret their provisions.*
- (c) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedure applicable within a time limit to be set by the Council.*

Conventions may provide that, once adopted by a number of Member States which they shall determine, they shall enter into force for those Member States. Measures implementing conventions shall be adopted within the Council by a majority of two thirds of the High Contracting Parties.

Conventions may stipulate that the Court of Justice shall have jurisdiction, upon their entry into force, to interpret their provisions and those of the measures implementing them and to rule on any dispute regarding their application, in accordance with such arrangements as they lay down. In the case of conventions and implementing measures which contain

provisions making an explicit or implicit reference to concepts of Community law, it shall be mandatory to confer jurisdiction on the Court of Justice to interpret such provisions by way of preliminary rulings, The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of conventions whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members.

5. Positions of the institutions

5.1. The Council of Ministers

The report of the Council of the European Union on the functioning of the TEU, dated 6 April 1995, takes up the subject of action against racism from the viewpoint of the progress achieved in the field of cooperation in justice and home affairs. The text stresses the importance of the work of the Consultative Commission on Racism and Xenophobia.

The fight against racism was one of the Irish Presidency's priorities. In its reply of 5 July 1996 to the conclusions of the Florence European Council, the Presidency stated its intention of carrying out a study of the legal and budgetary requirements for setting up a European Centre on Racism and Xenophobia and its relationship with the Council of Europe.

The positions of the Irish presidency on fundamental rights and the principle of non-discrimination were explicitly set out by Gay Mitchell, Secretary of State at the Foreign Affairs Ministry, in a speech to the Committee on Institutional Affairs of the European Parliament on 25 September 1996. Outlining the state of progress of the IGC negotiations, the minister stressed the existence of a consensus that the principle of non-discrimination should be strengthened and that new provisions should be included in the Treaty, on the basis of the Irish presidency's proposals.

The IGC representatives examined the subject of fundamental rights, on the basis of an introductory note by the presidency, on 3 September 1996. Following this, on 8 October 1996 the Irish presidency submitted a draft text setting out the 'approach suggested by the presidency' on the matter of fundamental rights. This was examined by the representatives on 15 and 16 October 1996. The proposals put forward on non-discrimination take account of the fact that there seems to be virtually no support for a general provision with direct effect.

On 1 October 1996 in Luxembourg, the IGC participants at ministerial level examined the main political problems likely to arise from amending the Treaty with a view to improving the workings of the third pillar. Within the field of the third pillar, action against racism is included in the list of subjects examined by the representatives on 16 July and 24 September 1996 with a view to defining the area covered by Union action in the spheres at present defined by Article K.1 of the TEU (justice and home affairs). In the wake of this, the draft text (dated 25 September 1996) submitted by the presidency to the ministerial meeting of 1 October 1996 proposes, in particular, adding a reference to the fight against

racism and xenophobia, as an eleventh item, to Article K.1 of the TEU. The proposal was reaffirmed (as mentioned above) in the draft revision of the Treaties that the Irish Presidency presented to the Dublin European Council.

It should also be noted that the fight against racism is one of the priorities for cooperation in justice and home affairs of the current Dutch presidency of the EU. On 20 November 1996, the presidency informed the press of its intention to set up a monitoring centre on racism and xenophobia. In his address to the plenary sitting of the European Parliament on 15 January 1997, the Dutch Foreign Minister Hans van Mierlo stressed the need for stronger measures to eliminate racism during 1997.

5.2. The Commission

In its opinion relating to the IGC dated 28 February 1996 and entitled 'Reinforcing political union and preparing for enlargement', the Commission takes the view that 'the Conference should also incorporate into the Treaty provisions banning discrimination of any kind (...) and condemning racism and xenophobia'.

The Commission has, in addition, published a detailed exposition of its position on non-discrimination and the fight against racism in relation to the IGC, in its communication of 13 December 1995 (COM(95)0653, p. 21). It stresses the need to ensure the application of Community law without discrimination and to create a broader-based legislative instrument on non-discrimination, whether in the body of the Treaty or in derived law. On the first point, the Commission favours the inclusion in the Treaty of a general non-discrimination clause, which would apply to all Community acts. This is the option proposed in the White Paper on social policy and taken up in the report of the Reflection Group. On the second point - a wider legislative instrument to ensure non-discrimination - the Commission *is pressing for 'specific powers to combat racial discrimination to be included in the Treaty'*.

The Commission's position was confirmed in the statement by Mr Flynn, Member of the Commission, during Parliament's annual debate on combating racism, held in plenary on 29 and 30 January. Mr Flynn told Parliament there would be an increase in funding for projects to combat racism amounting to ECU 4.7 m.

5.3. The European Parliament

Action against racism and xenophobia in Europe has been one of Parliament's recurring priorities from the 1980s on. The Evrigenis and Ford reports, adopted respectively in January 1986 and December 1990, as well as the reports by the Consultative Commission on Racism and Xenophobia to the Cannes and Madrid European Councils, are evidence of Parliament's consistently maintained belief that there must be a significant boosting of action against racism at European level.

In its resolution of 17 May 1995 (in the Bourlanges/Martin report) setting out its basic position on the IGC, Parliament declares that the Union must fully assume its responsibilities as regards the safeguarding of the fundamental rights of all persons

resident in the Union. With this in view, *'the Treaty should contain a clear rejection of racism, xenophobia (...) [and] anti-semitism (...) and guarantee adequate legal protection against discrimination for all individuals resident within the EU'*. In addition, among the measures proposed by Parliament to give greater substance to the concept of European citizenship is the *'inclusion of an explicit reference in the Treaty to the principle of equal treatment irrespective of race, sex, age, handicap or religion'*.

This position is further detailed in the Dury/Maij-Weggen report of 13 March 1996, which specified the political priorities of the European Parliament in the light of the Intergovernmental Conference following the publication of the work of the Reflection Group. The first priority is to improve the definitions of European citizenship and respect for human rights. It is proposed, in this connection, to add to the Treaty a special first chapter consisting of a *'Declaration of basic rights (...) of European citizens and residents'*. This chapter would guarantee *'the principle of equal treatment and non-discrimination, regardless, in particular, of race, gender, sexual orientation, age, religion or handicap'*, and should contain *'specific reference to the punishment of all acts of racism, anti-semitism and revisionism'*.

On 9 May 1996 the plenary of Parliament adopted the Oostlander report on the communication from the Commission on racism, xenophobia and anti-semitism (COM(95)0653 - C4-0132/96) and the proposal for a Council decision designating 1997 as European Year against Racism (COM(95)0653 - C4-0132/96). The report calls on the Member States to consider, in the context of the IGC, the possibility of incorporating into the TEU an article outlawing all discrimination on grounds of race. It is suggested that this article could be drawn up in terms similar to those of Article 6 of the EC Treaty, which prohibits all discrimination on grounds of nationality.

In its resolution on the Commission communication, Parliament takes the view that the Commission's chosen approach represents a global solution to the problem of racism, and expresses its support for the creation of a monitoring centre on racism and xenophobia. Parliament also considers that the Commission's view concerning the inclusion in the Treaty of specific powers to fight racism implies support for Parliament's campaign in this field.

After the Dublin European Council, in its resolutions on the Dublin European Council and the general outline for a draft revision of the Treaties, adopted in plenary on 16 January 1997, Parliament expressed its satisfaction at the inclusion of a non-discrimination clause and asked the Dutch Presidency of the Council to develop further the positive proposals by the Irish Presidency. However, Parliament also thought that the non-discrimination clause should be directly applicable and that the role of the European Parliament should be strengthened by means of the codecision procedure. Parliament regretted the lack of provisions concerning the rights of nationals of third countries who are legally resident in the Union and said that the Treaty must guarantee them respect for human rights, equal treatment and non-discrimination as regards, social, economic and cultural rights. Parliament thought that the provisions under Title VI of the Treaty on European Union should be strengthened and augmented to a considerable extent and:

should now be examined in detail with a view to their approval by the Intergovernmental Conference:

- (a) the question of a more substantial transfer to the Community 'pillar', along the lines proposed by the Belgian Government (retention of Title VI solely for judicial and police cooperation);*
- (b) the benefits of a phased approach to communitization, as suggested in the joint memorandum from the Benelux countries [and] the German and French Governments ... ;*
- (c) the extension of qualified majority voting in the Council, in connection with Title VI of the Treaty on European Union, as proposed by the German and French Governments ... ;*
- (d) the prospects that a formula for enhanced cooperation, as put forward by the German and French Governments, might offer;*
- (e) the development of provisions directed towards the introduction of a minimum common base for describing offences and punishments and towards facilitating the recognition and enforcement of judicial decisions and civil and criminal judicial assistance;*

Finally it should be mentioned that Parliament's annual debate on combating racism, held during the part-session of 29-30 January, resulted in the adoption of a resolution to the Intergovernmental Conference asking that the Commission should be given the right of initiative in this connection, that the Council should be able to take majority decisions and Parliament's right of codecision should be recognized. In his speech at the conference opening the European Year against Racism and Xenophobia, the President of Parliament, Mr Gil-Robles, proposed the inclusion of an article against discrimination in the general provisions of the new treaty; this would be immediately applicable and would not need to be implemented by subsequent legislation. During his speech in The Hague the President stressed that the Dutch Presidency needed to be supported in efforts towards the creation of a European Monitoring Centre against Racism and Xenophobia, so it could start work in 1998.

6. Positions of the Member States

6.1. General considerations

This section concerns the specific positions assumed by the Member States on the question of racism. The subject is also of relevance to such matters as European citizenship, fundamental rights and non-discrimination, not to mention asylum and immigration policy and social policy, in particular the fight against social exclusion. The reader is therefore also referred to the briefings on those subjects.

6.2. Germany

The document on *Germany's objectives for the IGC*, submitted by the German Foreign Minister, Mr Klaus Kinkel, on 26 March 1996 on the eve of the Turin European Council,

examines the subject of action against racism and xenophobia in the context of Germany's proposals for the third pillar (CJHA). The German government expresses its support for extending the Community's responsibilities in this field.

6.3. Austria

The document on *the Austrian government's guidelines on the probable subjects of the 1996 IGC*, submitted in June 1995, includes a number of general considerations by Austria on the fight against racism and xenophobia. These include the view that governments should be obliged to inform and consult each other on all anti-racist actions, and support for the creation of minimum prior conditions for protection against racist and xenophobic acts.

In the second part of a text of 26 March 1996 on Austria's positions of principle on the IGC, the Austrian Government urged that the fight against racism should be included in the revised treaty. This was supplemented by a contribution on fundamental rights presented by the Austrian and Italian delegations to the IGC Group of Ministers' Representatives on 3 October 1996.

6.4. Belgium

The note to the Belgian Parliament on government policy regarding the 1996 Intergovernmental Conference, dated 28 July 1995, refers to the possibility of a limited enlargement of the existing list of rights and obligations in the Treaty text, to cover action against racism and xenophobia. This is one of the proposals made in relation to fundamental rights and European citizenship.

This first statement of position by the Belgian government is confirmed by the joint memorandum of the Belgian, Luxembourg and Netherlands governments of 7 March 1996. The second section of this text concerns the deepening of the Union's policies, with particular reference to fundamental rights: the view is expressed that the Treaty should contain an explicit reference to the fight against racism and xenophobia. On fundamental rights, the memorandum also considers that the Treaty should include provision for penalties, which could go so far as to entail the suspension of certain rights arising from Union membership.

6.5. Denmark

The Danish government memorandum of 11 December 1995 states that the preamble to the Treaty should contain a reference to fundamental rights, no mention being made of the principle of (racial) non-discrimination.

6.6. Greece

The Greek government, in its *memorandum of 24 January 1996 on the IGC (Greece's positions and opinions)*, calls, in general terms, for the strengthening of the concept of citizenship, the elimination of all forms of discrimination, more effective action to protect human rights and fundamental freedoms, and the development of the Union as an area of freedom and internal security.

6.7. Spain

In its document of 28 March 1996 setting out the *elements for a Spanish position at the 1996 IGC* - specifically, in the second part on the citizen and the Union - the Spanish government expresses its support for including a general non-discrimination clause in the Treaty. This would supplement the existing Article 6 prohibiting all discrimination on grounds of nationality; this prohibition would be extended to apply to discrimination on grounds of race. Spain also believes that the Treaty should contain an explicit condemnation of racism, xenophobia and intolerance, by means of a provision similar to that proposed by the European Parliament in 1993.

6.8. France

The French memorandum of April 1996 ('For a European social model') considers the problem of racism in terms which seem to us to imply that France would favour including a new provision in the Treaty on the fight against racism and xenophobia. However, the scope of this political declaration remains uncertain, as it was not conceived as a specific contribution to the IGC.

On the grounds that the EU is founded on a set of principles and rights which go to make up our moral and cultural inheritance, the memorandum (in the version given as a speech by President Chirac) stresses that *'the defence of this inheritance supposes that Europe must act energetically to fight the recrudescence of the racism and xenophobia from which our continent has suffered so deeply in the past'*. In addition, the text states: *'France is following with interest the work of the Consultative Commission set up in 1994 by the European Council, and approves the suggestion of creating an EU monitoring centre on racism and xenophobia: such a unit would be a most valuable instrument for fighting the forces of hatred. Vigilance is the most effective weapon in this field ... France calls on the EU to take the necessary initiative and to make the necessary changes to the Treaty.'*

6.9. Ireland

In its foreign policy White Paper of 26 March 1996, entitled 'Challenges and opportunities abroad', Ireland expresses its support for strengthening some of the provisions on European citizenship, via the incorporation into the Treaty of certain rights and anti-discrimination provisions.

This initial position of the Irish government has been subsequently confirmed and spelt out in detail, in close liaison with the Council presidency, in a text dated 8 October 1996 and entitled 'Suggested approach of the Irish Presidency', on the subject of fundamental rights. With respect to the principle of non-discrimination on racial grounds, it should be stressed that this draft text proposes a legal basis for the adoption of measures against racism and xenophobia. Irish views are set out in the draft revision of the Treaties that the Irish Presidency of the Council presented to the Dublin European Council of 13-14 December 1996.

6.10. Italy

One of the priorities of the Italian government with respect to the relationship between the citizen and the Union is the inclusion in the first part of the Treaty of a number of fundamental rights applying to all persons irrespective of nationality and, more specifically, explicit provisions concerning non-discrimination and action against racism and xenophobia. These priorities are set out in the document 'Positions of the Italian government on the Intergovernmental Conference for the revision of the Treaties', dated 18 March 1996, and are further developed in the text of 3 October 1996 submitted jointly by Italy and Austria containing proposals on fundamental rights. This text is the most recent contribution to the debate on fundamental rights in the context of the IGC. With regard to non-discrimination and EU action against racism, the legal basis proposed by Italy and Austria would consist of a new Article Fa, to read:

'Article Fa

Within the field of application of the founding Treaties of the Union and without prejudice to the specific provisions of those Treaties, the Union shall ensure that no discrimination is exercised on grounds of race, colour, nationality, sex, language (...), religion, political opinion or any other opinion, membership of a national minority, racial origin, economic circumstances or disability.'

6.11. Luxembourg

In its 'Memorandum of 30 June 1995 on the 1996 IGC', the Luxembourg government expresses its support for introducing an explicit reference to action against racism and xenophobia into the preamble to the new Treaty.

6.12. Netherlands

On the subject of action against racism and xenophobia, the relevant position of the Netherlands is that expressed in the joint memorandum of the Belgian, Luxembourg and Netherlands governments on the IGC. The Dutch Presidency of the Council has given priority to the fight against racism in cooperation under the third pillar.

6.13. Portugal

The March 1996 document entitled 'Portugal and the IGC for revision of the Treaty on European Union' deals with the subject of Union citizenship and human rights in relation to the deepening of the Union. It is suggested that the Treaty should include a more detailed definition of the human rights dimension, with more specific commitments on the need to protect minorities and to combat all forms of discrimination, in particular racism, xenophobia and intolerance.

6.14. The UK

The 'British conception' of the IGC is set out in the 'United Kingdom White Paper of 12 March 1996 on the IGC: an association of nations'. On European citizenship, human rights and non-discrimination on grounds of race, the UK government *considers that the EU is not an appropriate context for the protection of fundamental human rights or, despite the views of some other Member States, for a general clause outlawing discrimination on such grounds as sex (...), race, religion (etc ...)*.

Paragraph 5 of the same document deals more specifically with racial discrimination, stating that *the government is proud of its national tradition and considers that the existing legal framework is the right one; it believes that problems of discrimination (especially those relating to sensitive areas such as race (...)) are best dealt with by applying the national legislation*.

6.15. Finland

The Finnish government, both in its memorandum of 18 September 1995 and in its report of 27 February 1996 to the national parliament detailing its starting-points and objectives for the IGC, considers the problem of racism in the context of its positions on Union citizenship. Specifically, it supports the incorporation in the Treaty of a general anti-discrimination clause, to include the outlawing of racism and xenophobia.

7. The Reflection Group

In its report of 5 December 1995, the Reflection Group (responsible for drawing up a detailed agenda for the IGC and initiating the public explanation and discussion of the reforms) paid special attention to the problem of racism.

The first part of its report, 'A strategy for Europe', which concerns the citizen and the Union, stresses the importance placed by many of the Member States on including an unambiguous statement in the Treaty on non-discrimination on racial grounds, as a central component of European values, together with an explicit condemnation of racism and xenophobia and a procedure for giving the provisions teeth.

The second part of the report, 'An annotated agenda', which consists of an examination of the provisions which could be revised, contains specific proposals on action against racism, including the following proposal:

'With a view to the Union embodying common European values further, the Group analysed the following possibilities:

- *a general clause prohibiting discrimination (in addition to the one prohibiting discrimination on grounds of nationality in Article 6), extending beyond nationality notably to grounds of gender, race, religion, disability, age and sexual orientation; (...)*
- *express condemnation in the Treaty of racism and xenophobia (including explicit reference to anti-semitism) and intolerance by means of a provision similar to the one proposed in 1993 by the European Parliament.'*

8. Positions of NGOs

Numerous NGOs have insisted that the revision of the Treaty must embrace the express inclusion of anti-racist activity in the Union's sphere of competence.

Some of these NGOs (the Starting Line Group, the European Union Migrants Forum, Amnesty International, the European Jewish Information Centre and the Euro Citizen Action Service, to name but a few), considered to be sufficiently representative by the European Parliament, were invited to express their positions at a major public hearing organized by Parliament's Committee on Institutional Affairs, which took place in two parts on 17-18 October 1995 and 26-27 February 1996. Their contributions are collected in a publication of the committee, 'The 1996 Intergovernmental Conference: the European Parliament listening to citizens'.

These NGOs share a common conception of the IGC, namely that the Union must equip itself with new instruments to improve the protection of human rights. They insist, in particular, on the need to include the principle of non-discrimination and the express condemnation of racism among the basic principles of the Union under the first pillar. They also advocate the inclusion in the Treaty of a specific legal basis for the adoption of measures against racism and xenophobia, as a means of firmly establishing the Union's powers in this sphere.

9. Conclusion

In the context of the European Year against Racism and Xenophobia and the urgent need for an integrated and coherent response by the Union to the transnational problem of racial discrimination, one of Parliament's main priorities for the IGC is the adoption of a binding legal instrument to combat the evil of racism. At the present advanced stage of the IGC, on the basis of the draft treaty prepared by the Irish Presidency, it may be envisaged

that a consensus will emerge on this subject at the Amsterdam Council in June 1997 and that a number of changes will accordingly be made to the Treaty.

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